S.B. Civil Writ Petition No.1877/2006
Purshottam & Anr.
vs
Mangilal & Ors.

Date of order : 30.10.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.JK Bhaiya, for the petitioners.
Mr.Mohd. Aslam, for the respondents.

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Heard learned counsel for the parties.

According to learned counsel for the petitioner, the petitioner has already filed affidavit as directed earlier but again the trial court has passed the order on 31st March, 2006 for filing the affidavit.

If this is the stand of the petitioner, the petitioner has unnecessarily filed the writ petition. When once the petitioner himself says that he has filed the affidavit which was in consonance with the order of the trial court dated 31st March, 2005 and even if the trial court has passed another order for filing fresh affidavit then the petitioner can not have reason to raise any grievance. Otherwise also, there is no reason for interference by this Court in writ jurisdiction in such a matter where the trial court only directed the petitioner to file affidavit in view of the reasons given in the impugned order dated 31st March, 2006. However, it is made clear

that Order 11 Rule 21 CPC of striking out of defence of the defendant is a harshest remedy and is rarely invoked unless a very strong case is made out because it denies the total opportunity of hearing to other party.

In view of the above reasons, I do not find any reason to interfere in the impugned order and petitioner is free to file fresh affidavit within a period of 15 days from today and petitioner may also state in the affidavit that the document in question was not in his possession or there was no other document, other than already filed.

Hence, the writ petition of the petitioner is dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-